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Security Council Committee established pursuant to resolution 2140 (2014)

Note verbale dated 1 February 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the Republic of Poland to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 2140 (2014) and, in accordance with paragraph 10 of Security Council resolution 2266 (2016), has the honour to report to the Committee on the implementation of Council resolutions 2140 (2014) and 2216 (2015).

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Annex to the note verbale dated 1 February 2018 from the Permanent Mission of Poland to the United Nations addressed to the Chair of the Committee

Report of Poland on the implementation of Security Council resolutions 2140 (2014) and 2216 (2015)

In accordance with paragraph 10 of Security Council resolution 2266 (2016), Member States are required to report to the Security Council Committee established pursuant to resolution 2140 (2014) on the steps taken with a view to effectively implementing the measures imposed under paragraphs 11 and 15 of resolution 2140 (2014) and paragraph 14 of resolution 2216 (2015).

The system of sanctions imposed by the Security Council is implemented by the European Union in a uniform manner through the adoption of relevant legislation, such as decisions and regulations enacted on the basis of article 29 of the Treaty on European Union and article 215 of the Treaty on the Functioning of the European Union, respectively. It should be noted that, from a legal perspective, a regulation has a direct binding effect for all persons and entities, without any requirement that it be incorporated into national legislation.

Therefore, as a member of the European Union, Poland implements the provisions of the said resolutions by applying, at the national level, relevant European Union legislation, giving effect to the obligation to implement measures, as required under the respective Security Council resolutions, such as the travel ban, the arms embargo and asset freezing.

In order to implement measures imposed under Security Council resolutions, the Council of the European Union adopted Council Decision 2014/932/CFSP of 18 December 2014 concerning restrictive measures in view of the situation in Yemen, followed by Council Regulation (EU) No. 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen, which were later amended.

Travel ban

In accordance with article 2a of Council Decision 2014/932/CFSP, as amended by Council Decision (CFSP) 2015/882, member States shall take the measures necessary to prevent the entry into, or transit through, their territories of persons listed in annex I to the decision.

It should be noted that, in any case of modification or adoption of a new listing through an implementing decision or regulation, relevant data pertaining to listed entities, enumerated in the annexes to a specific act, are entered in the Schengen Information System by each country holding the presidency of the Council of the European Union. The second-generation Schengen Information System is a highly efficient large-scale information system that supports external border control and law enforcement cooperation in the Schengen States. Participating States provide entries in the system on wanted and missing persons, lost and stolen property, and entry bans. It is immediately and directly accessible to all authorized police officers and other law enforcement officials and authorities that need the information to carry out their roles in protecting law and order and fighting crime.

Apart from uniform European Union legislation applicable to Schengen States, in accordance with national provisions as laid down in the Act of 12 December 2013 on Foreigners, there is a register of foreigners whose residence in the territory of Poland is undesirable, which is operational under the statutory competence of the Office for Foreigners.

According to article 435, paragraph 1, of the said legislation, the foreigner's data are entered and stored in the register if at least one of the enumerated circumstances exists, inter alia, if the entry or stay of the foreigner in the territory of the Republic of Poland is undesirable because of obligations arising from the provisions of ratified international agreements that are binding on the Republic of Poland and if it is justified by State defence or security or the protection of public safety and order or the interests of the Republic of Poland. This provision serves as a legal basis for entering in this database data on natural persons covered by a travel ban under the respective Security Council resolutions.

In this respect, the foreigner's data are to be stored in the register for the period required under international agreements that are binding on the Republic of Poland. In the case of entry when the stay of the foreigner may constitute a threat to State defence or security or the protection of public safety and order or interfere with the interests of the Republic of Poland, data are stored for a period not longer than five years, with the possibility of extension for subsequent periods, none of which exceeds five years.

Considering the sanctions regime against Yemen, enhanced scrutiny and monitoring are carried out by competent authorities supervising border control. Border guards, while fulfilling their duties, are entitled to carry out checks on persons and control the contents of baggage, along with meticulous control of travel documents and checking of their veracity.

Asset freezing

Asset freezing is addressed in the Republic of Poland in both national and European Union legislation. Council Regulation (EU) No. 1352/2014 provides clearly in article 2 that all funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities or bodies identified by the sanctions committee, as listed in annex I, shall be frozen. It is worth noting that all addressees of the European Union provisions are required by law to apply the asset-freezing measure without either prior confirmation or a decision made by the relevant authority.

It should be emphasized that, as far as asset freezing is concerned, the said regulation has been complemented by relevant national legislation. Chapter 5a of the Act of 16 November 2000 on Counteracting Money-Laundering and Terrorism Financing (Journal of Laws, 2016, item 299) supplements European regulations with procedures relating to the application of restrictive measures, the release of frozen assets and penalties applicable for non-compliance.

Under the said statute, it is mandatory for all covered institutions to freeze the asset values on the basis of the European Union legislation imposing specific restrictive measures directed against certain persons, groups or entities. Moreover, there is a specific requirement for covered entities to introduce a written internal procedure covering, in particular, customer due diligence, reporting, account blocking and asset freezing. The measures set forth in Council Regulation (EU) No. 1352/2014 should be considered along with a risk-based approach applicable by financial market entities at each stage and in line with international standards. Enhanced customer due diligence measures are regarded as a mandatory tool applied by the financial market entities in Poland when dealing with natural persons or legal entities established in third countries subject to an international sanctions regime. As a standard procedure, customer screening is carried out regularly, whenever there is a relevant amendment of the European Union legislation in force. Any institution, while performing such freezing, submits all the data in its possession and related to the freezing of asset values to the financial intelligence unit. In line with the legal requirements, as

provided above, reporting institutions are obliged to establish due diligence procedures. The identification and verification of the identity of a natural or legal person and of the beneficial owner on the basis of the identity documents, as well as data or information obtained from a reliable and independent source, are required under the Act on Counteracting Money-Laundering and Terrorism Financing. It should be noted that reporting institutions are subject to the requirements of the Act and are therefore subject to supervision. Pursuant to article 21, the financial intelligence unit is responsible for monitoring compliance by financial institutions with the requirements under the statute and related requirements on asset freezing.

Arms embargo

Pursuant to article 1, paragraph 1, of Council Decision 2014/932/CFSP, as amended by Council Decision (CFSP) 2015/882, the direct or indirect sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned to, or for the benefit of, the individuals and entities designated by the Security Council or the Security Council Committee established pursuant to resolution 2140 (2014), and those acting on their behalf or at their direction in Yemen, by nationals of member States or from the territories of member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

The robust legislative measures covering the export of arms and dual-use goods include Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as amended, as well as general principles applicable by the European Union member States in the authorization of arms transfers, specified in Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. The latter lays down, inter alia, the European Union criteria for arms exports, which are legally binding for the member States. These principal eight criteria cover such points as respecting international obligations and commitments, in particular sanctions imposed by the Security Council or the European Union and agreements on non-proliferation and other subjects, as well as human rights in the country of final destination and international humanitarian law, and also the internal situation in the country of final destination.

Under the legislative framework in Poland, trade in goods and technologies for military purposes, such as military equipment and dual-use goods, including technologies related to weapons of mass destruction, is subject to control by the State and is governed by the Act of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Significance for State Security and for Maintaining International Peace and Security (Journal of Laws, 2013, item 194) and relevant implementing legislation. The national system is fully in line with the policy of the European Union in matters covered by control of the export of arms and dual-use goods. This type of export has always been subject to enhanced scrutiny, in line with detailed procedures. The comprehensive national export control regime in force is based on close cooperation by various authorities while granting the relevant licence.

Taking into consideration the broad legislative framework, as well as enhanced scrutiny by national authorities, we firmly believe that Poland acts fully in line with international obligations.